

Appl. No. 09/755,353
Atty. Docket No. 8387&
Amdt. dated 06/30/2006
Reply to Office Action of 01/04/2006
Customer No. 27752

REMARKS

I. Claim Status

Claims 1-32 are pending in the present application.

Claims 1 and 20 have been amended in response to the Office Action in order to more clearly and particularly claim the subject matter of the invention. Antecedent basis for the amendments can be found in the specification at page 4, line 12 – page 5, line 24, including without limitation page 4, lines 17-20. It is believed these amendments and do not involve any introduction of new matter.

Claim 32 has been newly added. Antecedent support in the specification can be found at page 5, lines 22-24.

II. Rejection Under 35 USC §101

Claims 20-30 were rejected under 35 USC §101 on the basis that the claimed invention is directed to non-statutory subject matter. Specifically the Office Action indicates that the subject matter claimed, a “facility for conducting consumer product research” does not constitute any of the classes of statutory subject matter – i.e., a process, a machine or apparatus, a manufacture, or a composition of matter. Applicants respectfully traverse and this rejection.

The claimed facility and “mock environment” within it are “manufactures” within the meaning of 35 USC 101. The claimed facility simulates a variety of real environment, such as (but not limited to) rooms in a house, store, or other building, exists in the physical world. See the specification at page 4, lines 12-26. The claimed facility is not a virtual environment, but rather represents a real facility made by man with physically existing materials. This meaning is consistent with the ordinary meaning of the term “facility”. See, for example, Webster's Third New International Dictionary, Merriam-Webster Inc., publisher, copyright 1986, and pages 812-813 (copy attached) which includes the following definition for “facility”: “something (as a hospital, machinery, plumbing) that is built, constructed, installed or established to perform some particular function or to serve or facilitate some particular end”.

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The catch-all class of "manufacture" includes all such man-made articles except compositions of matter. Further, architectural designs and buildings have been held to be statutorily patentable subject matter. See for example *Park-In Theaters v. Perkins*, 190 F.2d. 137, 90 USPQ 163 (9th Cir. 1951).

Applicants respectfully assert that the facility and mock environment constitute manufactures as defined in Section 101. Withdrawal of the pending rejection is requested.

III. Rejection Under 35 USC §102 and/or 35 USC §103(a) of Claims 1-4, 6-8, 12-16, and 19

Claims 1-4, 6-8, 12-16, and 19 have been rejected under 35 USC §102(b) and anticipated by, or in the alternative, under 35 USC §103(a) as obvious over Article 3/99 "New Uses That Revitalize Old Brands" by Wansink, et al. (hereinafter referred to as "Wansink"). Applicants respectfully request reconsideration of these rejections in view of the amendment made to Claim 1.

The Office Action states that "As for the limitation of "having infrastructure to enable ... to be tested.." this carries no patentable weight because "to enable..." does not further modify an infrastructure. Claim 1 has been amended to more particularly and distinctly point out that the claimed infrastructure provides capability for testing a product in the context of an intended real environment. As taught in the specification at page 4, lines 11 – 22, the particular structure added to a mock environment will depend upon the actual intended use. The identification of such additions for a particular intended use will be understood by those skilled in the art.

The Office Action states that Wansink discloses (at page 3, 2nd paragraph) Applicants' Claim 1, element (c). Claim 1(c) provides the step of "collecting information relating to said at least one consumer's interaction with said product during testing of the product, wherein said step of collecting information comprises collecting information with *at least one device*" (emphasis added). Inspection of the cited portion of Wansink reveals that it does not disclose the use of devices to collect product testing information from a simulated or mock environment. Wansink discloses that videotapes may be used to

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record data from in-home testing (page 3, paragraph 1), however it does not suggest using such devices in a simulated environment.

Further, the present invention requires that the mock environment include infrastructure for testing the product in the context of a corresponding real environment. "In context" is defined in the specification at page 5, lines 17-20 to mean that the use, interaction with, and/or purchasing of product is accomplished within an intended environment and in an intended manner, as facilitated by the configuration of the mock environment". The infrastructure is intended to comprise the real, functional infrastructure that would be present in the corresponding real environment. The infrastructure can be fully functional or can be controlled from outside of the mock environment. The claimed infrastructure is to be distinguished from a mock infrastructure which has the appearance of being real but does not function, or a simulated infrastructure which is not real but has the appearance of providing functionality (e.g., a flight simulator).

Finally, Wansink discloses testing a "brand", as opposed to testing of the actual product. Wansink at page 3, second full paragraph states that "(T)he consumer is asked to tour the environment and articulate uses *for the brand being tested*" (emphasis added). There is no disclosure that the product, itself, is actually tested or used. Claim 1 of the present invention specifically provides that a product is tested. Testing of a product requires more than merely observing a product in simulated or mock environment and articulating new uses. Product testing is described in the specification at page 5, lines 22-24 as including testing of functionality, appearance, instructions for use, or results. Additionally, new Claim 32 expressly requires that testing of the product involves testing its functionality, appearance, instructions for use, or results.

In view of the above discussion, Wansink does not either anticipate or obviate make the rejected claims under 35 USC §§ 102 or 103.

IV. Rejection Under 35 USC §102 and/or 35 USC §103(a) of Claims 5, 9-11, and 17-18

Dependent Claims 5, 9-11, and 17-18 (all dependent directly or indirectly upon Claim 1) have been rejected under 35 USC §103 as being obvious over Wansink.

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Applicants respectfully submit that these claims are unobvious over Wansink for the same reasons stated above with respect to Claim 1, et al. in Section III above.

V. Rejection Under 35 USC §102 and/or 35 USC §103(a) of Claims 20-30

Claims 20-30 have been rejected under 35 USC 102(b) and anticipated by, or in the alternative, under 35 USC §103(a) as obvious over Wansink.

Applicants respectfully request reconsideration of this rejection in view of the amendment made to Claim 20 and the same reasons discussed above in connection with Claim 1.

VI. Rejection Under 35 USC §103(a) of Claims 1-4, 6-8, 12-16, 19, and 20-30

Claims 1-4, 6-8, 12-16, 19, and 20-30 have been rejected under 35 USC §103(a) as being obvious over Wansink in view of Watson (USP 5,616,030) or Nichols (USP 6,782,374) or Copperman (USP 5,618,179).

For the reasons previously discussed in connection with Claim 1, Wansink fails to disclose a method for testing products wherein the mock environment has an infrastructure for testing the product in the context of a corresponding real environment and collecting information regarding the product testing with a device.

Watson relates to a flight simulator kit. Watson specifically provides that the system provided does not require that actual aircraft instruments, structural features, and the like be used. The simulated controls in Watson, consequently, do not constitute infrastructure for testing products as in a corresponding real environment.

Nichols and Copperman fail as secondary references for the same reasons as Watson. The training systems in Nichols and Copperman also do not utilize infrastructure that enables the user to test an actual product using functional infrastructure in a mock environment. Rather, "mock" or "simulated" infrastructure or is used to mimic real performance while explicitly intending to do so without requiring the utilization of the real infrastructure.

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VII. Conclusion

In light of the above remarks, it is requested that the Examiner enter the above amendments, to reconsider and withdraw the rejections of Claims 1-31. Favorable consideration of allowance of Claims 1-32 is respectfully requested..

Respectfully Submitted,

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